

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

**REVISOR'S NOTE:** This section is new language derived without substantive change from former Art. 27, §§ 374 and 375.

In subsection (a)(1)(ii) of this section, the former reference to a "territory or possession" of the United States is deleted as included in the defined term "state".

In subsection (a)(1)(iii) of this section, the former reference to a machine gun that "is of the kind described in [former] § 379 is deleted as unnecessary in light of the fact that former § 379, which is revised as § 4-403(b) of this subtitle, required all machine guns to be registered when acquired, and annually thereafter.

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which only was implied in the former law. In this State, any crime that was not a felony at common law and has not been declared a felony by statute, is considered to be a misdemeanor. *See State v. Canova*, 278 Md. 483, 490 (1976), *Bowser v. State*, 136 Md. 342, 345 (1920), *Dutton v. State*, 123 Md. 373, 378 (1914), and *Williams v. State*, 4 Md. App. 342, 347 (1968).

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the presumption of offensive or aggressive purpose based on alienage revised in subsection (a)(1)(ii) of this section appears to be unconstitutional. The presumption attaches to any "unnaturalized foreign-born person" who possesses or uses a machine gun. According to the Attorney General, there does not appear to be any rational connection between the proved fact of foreign birth and the presumed fact of an offensive or aggressive purpose in possessing a machine gun. In the absence of such a rational basis, the provision violates both the Equal Protection and Due Process clauses of the U.S. Constitution. Although there is no direct Maryland case law construing subsection (a)(1)(ii) of this section, [former § 375(b)] the Attorney General cites a case under the similar Virginia statute finding that the presumption based on alienage violates both clauses. *Sandiford v. Commonwealth*, 225 S.E.2d 409, 410 (Va. 1976), citing *Graham v. Richardson*, 403 U.S. 365, 371-372 and 375 (1971) and *Leary v. U.S.*, 395 U.S. 6, 32-36 (1969). The General Assembly may wish to address this matter in substantive legislation. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 8-9 (May 21, 2001).